

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1278

Introduced by Senator Wolk

February 23, 2012

An act to amend Sections 65007, 65302.9, 65860.1, and 65865.5 of the Government Code, and to amend Section 9610 of the Water Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1278, as amended, Wolk. Planning and zoning: flood protection: Sacramento-San Joaquin Valley.

(1) Existing law requires each city and county within the Sacramento-San Joaquin Valley to amend its general plan, as specified, within 24 months of the adoption of the Central Valley Flood Protection Plan by the Central Valley Flood Protection Board. Existing law requires the Central Valley Flood Protection Board, the Department of Water Resources, and local flood agencies to collaborate with cities or counties by providing the cities and counties with information and other technical assistance to assist with complying with these requirements.

This bill would instead require each city and county to amend its general plan, as specified, within 24 months of July 2, 2013.

(2) Existing law prohibits a city or county within the Sacramento-San Joaquin Valley from entering into a development agreement for property

that is located in a flood hazard zone unless the city or county makes specified findings, including, among others, that certain conditions have been imposed by the city or county.

This bill would additionally authorize a city or county to make a finding that the property in an undetermined risk area, as defined, has met the urban level of flood protection, as specified.

(3) Existing law requires the Department of Water Resources to develop preliminary maps for the 100- and 200-year flood plains protected by project levees, as specified, and to provide the preliminary maps to cities and counties within the Sacramento-San Joaquin Valley.

This bill would additionally require the department, before July 2, 2013, to issue maps for areas protected by the State Plan of Flood Control *and to issue draft 200-year floodplain maps, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65007 of the Government Code is
2 amended to read:
3 65007. As used in this title, the following terms have the
4 following meanings, unless the context requires otherwise:
5 (a) "Adequate progress" means all of the following:
6 (1) The total project scope, schedule, and cost of the completed
7 flood protection system have been developed to meet the
8 appropriate standard of protection.
9 (2) (A) Revenues that are sufficient to fund each year of the
10 project schedule developed in paragraph (1) have been identified
11 and, in any given year and consistent with that schedule, at least
12 90 percent of the revenues scheduled to be received by that year
13 have been appropriated and are currently being expended.
14 (B) Notwithstanding subparagraph (A), for any year in which
15 state funding is not appropriated consistent with an agreement
16 between a state agency and a local flood management agency, the
17 Central Valley Flood Protection Board may find that the local
18 flood management agency is making adequate progress in working
19 toward the completion of the flood protection system.
20 (3) Critical features of the flood protection system are under
21 construction, and each critical feature is progressing as indicated
22 by the actual expenditure of the construction budget funds.

1 (4) The city or county has not been responsible for a significant
2 delay in the completion of the system.

3 (5) The local flood management agency shall provide the
4 Department of Water Resources and the Central Valley Flood
5 Protection Board with the information specified in this subdivision
6 sufficient to determine substantial completion of the required flood
7 protection. The local flood management agency shall annually
8 report to the Central Valley Flood Protection Board on the efforts
9 in working toward completion of the flood protection system.

10 (b) “Central Valley Flood Protection Plan” has the same
11 meaning as that set forth in Section 9612 of the Water Code.

12 (c) “Developed area” has the same meaning as that set forth in
13 Section 59.1 of Title 44 of the Code of Federal Regulations.

14 (d) “Flood hazard zone” means an area subject to flooding that
15 is delineated as either a special hazard area or an area of moderate
16 hazard on an official flood insurance rate map issued by the Federal
17 Emergency Management Agency. The identification of flood
18 hazard zones does not imply that areas outside the flood hazard
19 zones, or uses permitted within flood hazard zones, will be free
20 from flooding or flood damage.

21 (e) “Nonurbanized area” means a developed area or an area
22 outside a developed area in which there are fewer than 10,000
23 residents.

24 (f) “Project levee” means any levee that is part of the facilities
25 of the State Plan of Flood Control.

26 (g) “Sacramento-San Joaquin Valley” means lands in the bed
27 or along or near the banks of the Sacramento River or San Joaquin
28 River, or their tributaries or connected therewith, or upon any land
29 adjacent thereto, or within the overflow basins thereof, or upon
30 land susceptible to overflow therefrom. The Sacramento-San
31 Joaquin Valley does not include lands lying within the Tulare Lake
32 basin, including the Kings River.

33 (h) “State Plan of Flood Control” has the same meaning as that
34 set forth in subdivision (j) of Section 5096.805 of the Public
35 Resources Code.

36 (i) “Tulare Lake basin” means the Tulare Lake Hydrologic
37 Region as defined in the California Water Plan Update 2009,
38 prepared by the Department of Water Resources pursuant to
39 Chapter 1 (commencing with Section 10004) of Part 1.5 of Division
40 6 of the Water Code.

(j) “Undetermined risk area” means an *urban or urbanizing* area with possible, but undetermined, flood hazard risk for which an analysis of an urban level of flood protection has not been conducted by the Department of Water Resources, a local flood agency, or the National Flood Insurance Program *within a moderate flood hazard zone, as delineated on an official flood insurance rate map issued by the Federal Emergency Management Agency, which has not been determined to have an urban level of protection.*

(k) “Urban area” means a developed area in which there are 10,000 residents or more.

(l) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(m) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding *from a leveed riverine system* that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources.

~~(n) “Zone B and X (shaded)” means an area of moderate flood hazard, usually the area between the limits of the 100-year and 500-year floods, and designates base floodplains of lesser hazards, such as areas protected by levees from 100-year flood, or shallow flooding areas with average depths of less than one foot or drainage areas less than one square mile.~~

SEC. 2. Section 65302.9 of the Government Code is amended to read:

65302.9. (a) Before July 2, 2013, the Department of Water Resources shall ~~issue maps for areas protected by the State Plan of Flood Control~~ *draft 200-year floodplain maps for areas protected by the State Plan of Flood Control that contain sufficient information and supporting data to allow a determination to be made as to whether an area protected by the State Plan of Flood Control has an urban level of flood protection.*

(1) The department shall publish two notices of the draft 200-year floodplain maps in newspapers widely circulated within the area shown on the draft 200-year floodplain maps. A 90-day public comment period shall begin on the date of the second publication during which scientific or technical appeals and protests may be submitted to the Central Valley Flood Protection Board.

1 (2) Appeals shall be based on scientific or technical data that
2 show draft maps to be scientifically or technically incorrect. Any
3 person who makes an appeal shall include the method, data, and
4 analysis used to support their claim.

5 (3) Following resolution of all appeals by the Central Valley
6 Flood Protection Board, the department shall prepare and publish
7 final 200-year floodplain maps.

8 (4) If no appeals are received during the 90-day comment
9 period, the draft maps shall be considered final.

10 (b) Within 24 months of July 2, 2013, each city and county
11 within the Sacramento-San Joaquin Valley shall amend its general
12 plan to contain all of the following:

13 (1) (A) The data and analysis contained in the Central Valley
14 Flood Protection Plan pursuant to Section 9612 of the Water Code,
15 including, but not limited to, the locations of the facilities of the
16 State Plan of Flood Control and the locations of the real property
17 protected by those facilities.

18 (B) The locations of flood hazard zones, including, but not
19 limited to, locations mapped by the Federal Emergency
20 Management Agency Flood Insurance Rate Map or the Flood
21 Hazard Boundary Map, locations that participate in the National
22 Flood Insurance Program, locations ~~identified as Zones B and X~~
23 ~~(shaded) by the Federal Emergency Management Agency of~~
24 ~~undetermined risk areas~~, and locations mapped by a local flood
25 agency or flood district.

26 (2) Goals, policies, and objectives, based on the data and
27 analysis identified pursuant to paragraph (1), for the protection of
28 lives and property that will reduce the risk of flood damage.

29 (3) Feasible implementation measures designed to carry out the
30 goals, policies, and objectives established pursuant to paragraph
31 (2).

32 (c) An undetermined risk area shall be presumed to be at risk
33 for a flood hazard unless deemed otherwise by the State Plan of
34 Flood Control, an official National Flood Insurance Program rate
35 map issued by the Federal Emergency Management Agency, or a
36 finding made by a city or county based on a determination of
37 substantial evidence by a local flood agency.

38 (d) To assist each city or county in complying with this section,
39 the Central Valley Flood Protection Board, the Department of
40 Water Resources, and local flood agencies shall collaborate with

1 cities or counties by providing them with information and other
2 technical assistance.

3 (e) In implementing this section, each city and county, both
4 general law and charter, within the Sacramento-San Joaquin Valley,
5 shall comply with this article, including, but not limited to, Sections
6 65300.5, 65300.7, 65300.9, and 65301.

7 (f) Notwithstanding any other law, this section shall apply to
8 all cities, including charter cities, and counties within the
9 Sacramento-San Joaquin Valley. The Legislature finds and declares
10 that flood protection in the Sacramento and San Joaquin Rivers
11 drainage areas is a matter of statewide concern and not a municipal
12 affair as that term is used in Section 5 of Article XI of the
13 California Constitution.

14 SEC. 3. Section 65860.1 of the Government Code is amended
15 to read:

16 65860.1. (a) Not more than 12 months after the amendment
17 of its general plan pursuant to Section 65302.9, each city and
18 county within the Sacramento-San Joaquin Valley shall amend its
19 zoning ordinance so that it is consistent with the general plan, as
20 amended.

21 (b) Notwithstanding any other law, this section shall apply to
22 all cities, including charter cities, and counties within the
23 Sacramento-San Joaquin Valley. The Legislature finds and declares
24 that flood protection in the Sacramento and San Joaquin Rivers
25 drainage areas is a matter of statewide concern and not a municipal
26 affair as that term is used in Section 5 of Article XI of the
27 California Constitution.

28 SEC. 4. Section 65865.5 of the Government Code is amended
29 to read:

30 65865.5. (a) Notwithstanding any other law, after the
31 amendments required by Sections 65302.9 and 65860.1 have
32 become effective, the legislative body of a city or county within
33 the Sacramento-San Joaquin Valley shall not enter into a
34 development agreement for property that is located within a flood
35 hazard zone unless the city or county finds, based on substantial
36 evidence in the record, one of the following:

37 (1) The facilities of the State Plan of Flood Control or other
38 flood management facilities protect the property to the urban level
39 of flood protection in urban and urbanizing areas or the national

1 Federal Emergency Management Agency standard of flood
2 protection in nonurbanized areas.

3 (2) The city or county has imposed conditions on the
4 development agreement that will protect the property to the urban
5 level of flood protection in urban and urbanizing areas or the
6 national Federal Emergency Management Agency standard of
7 flood protection in nonurbanized areas.

8 (3) The local flood management agency has made adequate
9 progress on the construction of a flood protection system that will
10 result in flood protection equal to or greater than the urban level
11 of flood protection in urban or urbanizing areas or the national
12 Federal Emergency Management Agency standard of flood
13 protection in nonurbanized areas for property located within a
14 flood hazard zone, intended to be protected by the system. For
15 urban and urbanizing areas protected by project levees, the urban
16 level of flood protection shall be achieved by 2025.

17 (4) The property in an undetermined risk area has met the urban
18 level of flood protection based on substantial evidence in the record
19 provided by the developer.

20 (b) The effective date of amendments referred to in this section
21 shall be the date upon which the statutes of limitation specified in
22 subdivision (c) of Section 65009 have run or, if the amendments
23 and any associated environmental documents are challenged in
24 court, the validity of the amendments and any associated
25 environmental documents has been upheld in a final decision.

26 (c) This section does not change or diminish existing
27 requirements of local flood plain management laws, ordinances,
28 resolutions, or regulations necessary to local agency participation
29 in the national flood insurance program.

30 SEC. 5. Section 9610 of the Water Code is amended to read:

31 9610. (a) (1) By July 1, 2008, the department shall develop
32 preliminary maps for the 100- and 200-year flood plains protected
33 by project levees. The 100-year flood plain maps shall be prepared
34 using criteria developed or accepted by the Federal Emergency
35 Management Agency (FEMA).

36 (2) The department shall use available information from the
37 2002 Sacramento-San Joaquin River Basin Comprehensive Study,
38 preliminary and regulatory FEMA flood insurance rate maps,
39 recent flood plain studies, and other sources to compile preliminary
40 maps.

1 (3) The department shall provide the preliminary maps to cities
2 and counties within the Sacramento-San Joaquin Valley for use
3 as best available information relating to flood protection.

4 (4) The department shall post this information on the board's
5 Internet Web site and may periodically update the maps as
6 necessary.

7 (b) By July 1, 2008, the department shall give notice to cities
8 in the Sacramento-San Joaquin Valley outside areas protected by
9 project levees regarding maps and other information as to flood
10 risks available from the Federal Emergency Management Agency
11 or another federal, state, or local agency.

12 (c) On or before December 31, 2010, the department shall
13 prepare a status report on the progress and development of the
14 Central Valley Flood Protection Plan pursuant to Section 9612.
15 The department shall post this information on the board's Internet
16 Web site, and make it available to the public.

17 (d) On or before July 1, 2013, the department shall issue maps
18 for areas protected by the State Plan of Flood Control.